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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19
 20 MARK HARRIS;

CASE NO. C-08-01810 JSW

21 Plaintiff,

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED] ORDER**

22 vs.

23 UNITED PARCEL SERVICE, INC.; an
 24 Ohio Corporation; and DOES ONE
 25 THROUGH HUNDRED, inclusive,

Date: August 8, 2008
 Time: 1:30 p.m.
 Courtroom: 2, 17th Floor

Defendants.

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1 At the Court's request, the parties to the above-entitled action jointly submit this
 2 Case Management Statement and Proposed Order and request the Court to adopt it as its Case
 3 Management Order in this case.¹

4 **I. JURISDICTION AND SERVICE**

5 This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28
 6 U.S.C. §§ 1331, 1332, 1367, and 1441(a) and (b). No issues exist regarding personal jurisdiction
 7 or venue. All parties have been served.

8 **II. FACTS**

9 **A. UPS' Factual Summary:**²

10 Mark Harris worked for Defendant United Parcel Service, Inc. ("UPS") as a
 11 package car driver in Oakland, California. On November 15, 2005, UPS terminated Plaintiff's
 12 employment for job abandonment after Plaintiff failed to report for work for eleven months. UPS
 13 also issued discharge letters to Plaintiff in April 2006, July 2006 and April 2007 for being off
 14 work in excess of the period of time permitted by the collective bargaining agreement ("CBA")
 15 that governed the terms of Plaintiff's employment.

16 Harris alleges that UPS discriminated against him on the basis of his age, race, and
 17 disability by discharging him. He also claims that UPS failed to accommodate his disability,
 18 retaliated against him by discharging him for engaging in protected activities, breached the CBA
 19 between UPS and the Teamsters Union, and engaged in unfair competition by discharging
 20 Plaintiff. Plaintiff further alleges that he suffered extreme emotional distress. Plaintiff brings this
 21 action under the California Fair Employment and Housing Act ("FEHA"), California common
 22 law, and the California Unfair Competition Law, Business & Professions Act § 17200.

23 UPS denies that it engaged in any unlawful conduct with respect to Plaintiff's
 24 employment or that he suffered any damages as a result of any alleged conduct. UPS followed

25 ¹ For the Court's information, none of the information written on behalf of UPS or to which the
 26 parties are in agreement are different than what UPS set forth in the Case Management
 Conference Statement it filed on August 1, 2008.

27 ² On April 22, 2008, the parties stipulated to dismiss individual defendants Tony Agenjo and
 28 Kimberly Muniz from this action. The Court signed the order approving the stipulation on April
 23, 2008.

1 the law with respect to each of its interactions with Plaintiff, provided Plaintiff with reasonable
 2 accommodations, and made all of its decisions regarding Plaintiff for legitimate, non-
 3 discriminatory, and non-retaliatory business reasons.

4 **B. Plaintiff's Factual Summary:**

5 Plaintiff, a longtime employee of UPS, suffered an industrial injury on March
 6 10, 2004, and has been thereafter disabled from his former occupation as Driver. Plaintiff timely
 7 reported his industrial injury, and has sought and obtained treatment for that injury through the
 8 California Worker's Compensation System. During his period of disability, Plaintiff was given
 9 notice by UPS of its intent to terminate his employment, the first such notice of which was given
 10 in November, 2005. UPS failed and/or refused to accommodate Plaintiff's disability in that it
 11 failed or refused to offer him available alternative employment prior to issuance of its notice of
 12 termination.

13 Plaintiff timely commenced a grievance proceeding as required under the
 14 applicable CBA and in April 2006, was reinstated to employment after a hearing on the matter
 15 was had. Plaintiff reported for work, but was refused any employment and the following day UPS
 16 issued its second notice of termination of employment. Plaintiff again pursued his remedies
 17 under the applicable CBA, and on the day prior to his second hearing, in July, 2006, was given
 18 notice that his employment had been terminated. Plaintiff was again reinstated. UPS then issued
 19 a third notice of termination following a third hearing in the matter in which the matter was left
 20 unresolved due to a deadlock.

21 Plaintiff alleges that UPS discriminated against him on the basis of his age and/or
 22 race and/or disability and/or for engaging in protected activities, all in violation of the applicable
 23 CBA, the California FEHA, the ADA, the FMLA, California common law and California's
 24 Unfair Competition law, Bus. & Prof. Code Section 17200.

25 **III. LEGAL ISSUES**

26 Because this case is at an early phase, and because the parties have not completed
 27 discovery, the parties do not know all legal issues that may be in dispute. However, it appears
 28 there will be disputed legal issues regarding the following topics:

- 1 1. Whether Plaintiff's claims are barred by the applicable statute of
2 limitations;
- 3 2. Whether Plaintiff's claims are barred because Plaintiff failed to exhaust his
4 administrative remedies;
- 5 3. Whether UPS had a legitimate, non-discriminatory reason for terminating
6 Plaintiff;
- 7 4. Whether Plaintiff suffered from a disability;
- 8 5. Whether Plaintiff was qualified to perform all of the essential duties of a
9 package car driver, with or without reasonable accommodation;
- 10 6. Whether Plaintiff requested reasonable accommodation for his purported
11 disability;
- 12 7. Whether UPS granted Plaintiff reasonable accommodation;
- 13 8. Whether accommodating Plaintiff would constitute an undue hardship
14 upon UPS;
- 15 9. Whether Plaintiff engaged in a protected activity that could be the basis for
16 a retaliation claim;
- 17 10. Whether UPS took an adverse employment action against Plaintiff because
18 he engaged in protected activity;
- 19 11. Whether UPS had a legitimate, non-retaliatory reason for terminating
20 Plaintiff's employment;
- 21 12. Whether UPS violated the CBA when it terminated Plaintiff;
- 22 13. Whether Plaintiff exhausted internal grievance procedures;
- 23 14. Whether Plaintiff suffered any damages as the result of any alleged
24 wrongful conduct by UPS;
- 25 15. Whether Plaintiff suffered any emotional distress as a result of UPS'
26 alleged conduct and, if so, the nature and extent of any such emotional distress;
- 27 16. Whether UPS engaged in any behavior that was so extreme and outrageous
28 as to exceed all bounds of that usually tolerated in a civilized society;

- 1 17. Whether Plaintiff satisfied his duty to mitigate any alleged damages;
- 2 18. Whether UPS had any unfair company policy that harmed Plaintiff;
- 3 19. Whether any managing agent of UPS was guilty of malice, fraud, and/or
- 4 oppression as defined under Civ. Code Section 3294;
- 5 20. Whether Plaintiff is entitled to any punitive damages.

6 **IV. MOTIONS**

7 UPS may move for judgment on the pleadings. At the appropriate time, UPS
8 anticipates moving for summary judgment on all of Plaintiff's claims. Defendant will file
9 discovery motions as necessary. If appropriate, UPS will move to bifurcate the liability and
10 punitive damages phases of the trial.

11 Plaintiff may either move for protective orders regarding his employment records
12 with PMS and other non-UPS entities or may seek to quash subpoenas that seek such records.

13 **V. AMENDMENT OF THE PLEADINGS**

14 Plaintiff intends to amend his complaint pursuant to stipulation with Defendant.

15 UPS reserves the right to answer any further amended complaint and to seek leave
16 to amend its answer to comport to facts and theories as discovered during the course of this
17 litigation.

18 **VI. EVIDENCE PRESERVATION**

19 UPS has notified relevant personnel of the need to preserve evidence relevant to
20 the issues reasonably evident in this action, including all relevant documents, records, and
21 electronic information in their possession.

22 Plaintiff has made reasonable efforts to preserve relevant evidence in his
23 possession, custody and control.

24 **VII. INITIAL DISCLOSURES**

25 Pursuant to Rule 26(a)(1)(C), the parties stipulated to exchange initial disclosures
26 on or before August 8, 2008.

27

28

1 **VIII. DISCOVERY**2 **A. UPS' Response:**

3 Because discovery already had commenced in state court before this suit was
 4 removed to federal court, the parties stipulated to complete the requested discovery before initial
 5 disclosures. Thus, UPS deposed Plaintiff for one day. Plaintiff has agreed to sit for a second day
 6 of deposition on a date mutually agreeable to the parties. Plaintiff also has responded to UPS'
 7 request for production of documents.

8 Additionally, UPS has served a subpoena on Pacific Maritime Association, which
 9 Plaintiff contends is his current employer. Plaintiff has indicated that he will move to quash UPS'
 10 subpoena. The parties will meet and confer regarding this discovery dispute.

11 Through the course of this litigation, UPS will continue to seek discovery
 12 regarding Plaintiff's claims and UPS' defenses. UPS anticipates deposing Plaintiff's doctors, any
 13 percipient witnesses, and any designated experts. If necessary, UPS will propound additional
 14 discovery requests, including interrogatories, requests for admission, document requests, and
 15 third party subpoenas.

16 **B. Plaintiff's Response:**

17 Written Discovery: Plaintiff intends to seek written discovery of Defendants'
 18 policies and procedures concerning its treatment of injured workers (including those who assert
 19 claims for compensation for industrial injuries), the methods and manner in which it seeks to
 20 accommodate those workers, its disciplinary policies procedures and its procedures concerning
 21 how it terminates persons for "job abandonment." Plaintiff further intends to seek written
 22 discovery concerning prior litigation against UPS for claims substantially similar to those asserted
 23 by Plaintiff herein, including any court rulings/judgment or consent decrees arising from such
 24 litigation.

25 Deposition Discovery: Plaintiff intends to seek the deposition of the authors of the
 26 letters giving notice of his termination, and of the persons most knowledgeable concerning
 27 Defendants' policies and procedures concerning its treatment of injured workers (including those
 28 who assert claims for compensation for industrial injuries), the methods and manner in which it

1 seeks to accommodate those workers, its disciplinary policies procedures and its procedures
 2 concerning how it terminates persons for "job abandonment."

3 **IX. CLASS ACTIONS**

4 This case is not a class action.

5 **X. RELATED CASES**

6 The parties are not aware of any related cases.

7 **XI. RELIEF**

8 **A. UPS' Response:**

9 UPS contends that Plaintiff has not suffered any harm or damages by any conduct
 10 of its employees.

11 **B. Plaintiff's Response:**

12 Plaintiff contends that he has suffered economic damages consisting of lost wages
 13 and benefits exceeding \$1 million over his anticipated working life, assuming retirement from
 14 UPS with full benefits at age 67. In addition, Plaintiff contends that he has suffered non-
 15 economic damages consisting of emotional distress in an amount exceeding his economic
 16 damages.

17 Plaintiff will also seek exemplary damages according to proof at trial of this
 18 matter.

19 **XII. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

20 Because this case is at an early phase and because the parties have not yet
 21 completed discovery, the parties do not know the prospects for settlement.

22 **XIII. MAGISTRATE JUDGE**

23 The parties do not consent to have a magistrate judge conduct all further
 24 proceedings in this matter, including trial.

25 **XIV. OTHER REFERENCES**

26 The parties do not believe that this case is suitable for reference to binding
 27 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

28

1 **XV. NARROWING OF ISSUES**

2 UPS may file a motion for judgment on the pleadings on Plaintiff's claims as
 3 appropriate. UPS also anticipates filing a summary judgment motion on all of Plaintiff's claims.
 4 Additionally, if the case proceeds to trial, UPS anticipates filing a motion to bifurcate the liability
 5 and punitive damages phases of the trial.

6 **XVI. EXPEDITED SCHEDULE**

7 The parties do not believe this case can be handled on an expedited basis with
 8 streamlined procedures.

9 **XVII. SCHEDULING**

| | | |
|----|---|---------------------|
| 10 | Non-expert discovery cut-off: | January 30, 2009. |
| 11 | Last day to file dispositive motions: | March 31, 2009. |
| 12 | Exchange of names, vitae, and 13 reports of expert witnesses: | May 29, 2009. |
| 14 | Exchange of names, vitae, and 15 reports of rebuttal expert witnesses: | June 29, 2009. |
| 16 | Expert discovery cut off: | August 13, 2009. |
| 17 | Final pre-trial conference: | September 11, 2009. |
| 18 | Trial: | October 13, 2009. |

19 **XVIII. TRIAL**

20 Plaintiff has requested a jury trial. Because of the early stage of the proceedings,
 21 the parties are uncertain how long the trial may last, but anticipate that it may last seven to ten
 22 court days.

23 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**24 **A. UPS' Response:**

25 On April 3, 2008, UPS filed the "Certification of Interested Entities or Persons"
 26 required by Civil Local Rule 3-16. In its certification, UPS stated that it had no parent companies
 27 and that no publicly-held corporations own ten percent or more of its stock. UPS further certified
 28 that pursuant to Local Rule 3-16, other than the named parties, it had no such interest to report.

1 **B. Plaintiff's Response:**

2 Other than Plaintiff, and those persons that may be identified by Defendant,
3 Plaintiff is not aware of any interest parties as defined by Local Rule 3-16.

4 Dated: August 5, 2008

5 E. JEFFREY GRUBE
6 KERRI N. HARPER
7 ANNA L. CHU
8 PAUL, HASTINGS, JANOFSKY & WALKER LLP

9
10 By: _____ /s/ Kerri N. Harper
11 Dated: August 5, 2008

12 Attorneys for Defendant
13 UNITED PARCEL SERVICE, INC.

14 STEVEN J. MEHLMAN
15 MARC L. TERBEEK
16 MEHLMAN TERBEEK LLP

17
18 By: _____ /s/ Marc L. TerBeek
19 Dated: August 5, 2008

20 Attorneys for Plaintiff
21 MARK HARRIS

[PROPOSED] CASE MANAGEMENT ORDER

The Joint Case Management Conference Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

DATED: _____ . By: _____
HON. JEFFREY S. WHITE
Judge, United States District Court